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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 466

LARRY DAYTON HUDSON, PETITIONER,

VS.

NORTH CAROLINA

**ON WRIT OF HABEAS CORPUS TO THE SUPREME COURT OF THE STATE
OF NORTH CAROLINA**

PETITION FOR HABEAS CORPUS FILED APRIL 16, 1959

HABEAS CORPUS GRANTED OCTOBER 12, 1959

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 466

LARRY DAYTON HUDSON, PETITIONER,

vs.

NORTH CAROLINA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF NORTH CAROLINA

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[fol. a]

**IN THE RECORDER'S COURT OF CUMBERLAND
COUNTY, STATE OF NORTH CAROLINA**

Criminal Action

STATE WARRANT

STATE

VS.

**LARRY HUDSON, Highland Acres, White; RAY STARLING;
Rt. 2, City; DAVID CAIN**

Elmer Arnette (Inf. & Belief) being duly sworn, complains and says that at and in said County, in Pearces Mill Township, on or about the 14 day of Feb., 1958 Larry Hudson, Ray Starling, David Cain, did unlawful, wilfully and feloniously take and steal from the person the amount of \$24.00 in U. S. Currency, contrary to the form of the statute, and against the peace and dignity of the State.

s/ Elmer Arnett.

Subscribed and sworn before me this 18th day of Feb., 1958. s/ A. C. Kitchen, JP, Cumberland County.

THE STATE OF NORTH CAROLINA

To Any Lawful Officer of Cumberland County, Greetings:

You are hereby commanded forthwith to arrest Ray Starling, David Cain, Larry Hudson and them safely keep, so that you have them before the Recorder's Court of Cumberland County Immediately, to answer the above complaint, and be dealt with as the law directs.

Given under my hand and seal of said Court, this 18 day of Feb., 1958.

s/ A. C. Kitchen, JP, Cumberland County.

[fol. b] [Endorsed:] Recorder's Court. No. 12841. State vs. Larry Hudson, Ray Starling, David Cain. Warrant for Assault & Robbery. Witnesses for the State: W. G. Spells, E. Arnette, J. D. Snipes. Received 2-18-1958. Served 2-18-1958. L. L. Guy, Sheriff Cumberland County. Per J. D. Snipes, D.S.

[fol. c] IN THE RECORDER'S COURT, CUMBERLAND COUNTY

Warrant No. 12841

Criminal Docket

2-25-58.

Issuing Warrant	\$1.50	1.50
Docketing	.50	.50
Copies each defendant	1.00	
Subpoena, each name	.20	
Filing Papers	.25	.25
Recognizance, ea. where no bond taken	.25	
Taking Bond, including justification	.75	.75
Continuance	.25	
Seal, when necessary	.25	
Empanéling Jury	.25	
Motion, entry and record of	.10	
Notices	.25	
Notices, ea. name over 1 in same paper	.10	
Affidavit with jurat and certificate	.15	
Judgment final (against each defendant)		5.00
Judgment nisi	.50	
Preparing Bill of Costs	.80	
Recording in Minutes	.30	.30
Fine against Defendant		.50
Solicitor		
Jury Fund, when jury empaneled	6.00	6.00
Sheriff or Police arrest	1.50	
State Treas.	1.00	

14.80

5.50

J. D. Simproch

City Cost
Magistrate
Constable
State Witnesses

\$20.30

Defendant's Witnesses

JUDGMENT

Deft. Ct.—As to Ray Starling, judgmt nisi — causes as to Starling. After hearing the evidence the Court finds probable cause and binds the deft. David Cain &

Larry Hudson over to Superior Court. Bond set at \$200.00 as to David Cain. Larry Hudson, \$400.00, changed to \$200.00. Deft. Reuben Grimsley transferred to Cumb. Co. Juvenile Court.

_____, Clerk.

[fol. d] IN THE SUPERIOR COURT OF CUMBERLAND COUNTY,
MARCH TERM, A.D. 1958

INDICTMENT

The Jurors for the State upon their oath present, That Larry Hudson, Ray Starling & David Cain, late of the County of Cumberland, on the 14 day of February in the year of our Lord one thousand nine hundred and fifty-eight, did with force and arms, at and in the County aforesaid, unlawfully, wilfully, and feloniously rob and take \$24.00 in U.S. Money from the person of W. G. Spell, the property of W. G. Spell, without his consent, and against his will, by violence, intimidation and putting in fear, against the form of the statute in such case made and provided and against the peace and dignity of the State.

s/ E. M. Braswell, Solicitor.

No. 10,276

STATE

VS.

DAVID CAIN, LARRY HUDSON, RAY STARLING

INDICTMENT—VARIOUS CASES

Robbery

, Pros.

Witnesses:

X W. G. Spell.
X Elmer Arnett, DS.
J. D. Snipes, DS.

Those marked x sworn by the undersigned Foreman, and examined before the Grand Jury, and this bill found.

x A True Bill

s/ C. R. Dawkins, Foreman Grand Jury.

[fol. 1] IN THE SUPERIOR COURT, CUMBERLAND COUNTY,
NORTH CAROLINA, MARCH TERM 1958

STATE OF NORTH CAROLINA

VS.

LARRY HUDSON, RAY STARLING AND DAVID CAIN

Stenographer's Transcript of Evidence

Honorable Heman R. Clark, judge presiding.

APPEARANCES

State represented by Solicitor Braswell and Assistant Solicitor Blackwell; defendant David Cain represented by Attorney McGeachy; other defendants not represented.

Defendant Larry Hudson: I don't have funds to employ an attorney and am not capable of defending myself. If the Court please, I would like to ask the Court to employ me an attorney.

Attorney Blackwell: I will say that he is not able to employ an attorney, but as to whether he is able to represent himself I cannot say.

Court: The Court will try to see that your rights are protected throughout the case.

The defendant Cain, through counsel entered a plea of not guilty; the defendants Hudson and Starling pleaded not guilty.

Court: (After the State had passed the jury): You (addressing defendants) now have the right to excuse anybody on the jury that you wish to.

[fol. 2] G. W. SPELL, a witness for the State, being first duly sworn, testified as follows:

Direct Examination.

Questions by State (Assistant Blackwell):

Q. Your name is Mr. W. G. Spell?

A. Right.

Q. Mr. Spell, where do you live in this county?

A. Down 301 about eight miles and three tenths from Fayetteville.

Q. How long have you been living in this county?

A. The eighth of next month will be seven years.

Q. Where do you work?

A. The Utah Shopping Center Housing Project.

Q. Mr. Spell, on or about the 14th day of February, 1958, did you have occasion to see any one or all three of these individual defendants sitting here?

A. I saw that one, the third one from the man at the table, he is the one.

Q. Which one are you pointing at?

A. The second fellow across the book there, he is the one.

Court: We have to identify him?

A. The one with no coat. (Indicating Larry Hudson).

Q. Is this the man you are talking about?

A. He is the one took the billfold.

Q. Where did you first see those boys?

A. The boys there done the robbing. He come running [fol. 3] and jumped in the car fixing to back out.

Court: We have to get this a little clearer. First he said he saw Larry Hudson and then you asked where did he see these boys.

A. Down on the street and he was going to take me to the house.

Questions continued by Attorney Blackwell:

Q. Is Larry Hudson the one you are talking about?

A. Yes, sir.

Q. You saw him on the street?

A. Yes, sir.

Q. Where did you see him on the street, what part of town?

A. Right across the street from the courthouse, about the second or third store up.

Q. About what time of day or night did you see him?

A. I say probably seven o'clock.

Q. Was it dark at that time?

A. Getting pretty dark.

Q. Where had you been before you saw him?

A. I had come in from work to town.

Q. All right, where?

A. I had come from work to town and paid a few bills and come down and got a beer and he wanted to take me home.

Q. Just a minute now, did you go to a bar?

A. The second bar from the Market House.

[fol. 4] Q. What is known as the Flamingo Bar?

A. Yes.

Q. And in relation to the Flamingo Bar, where did you see the Defendant Larry Hudson?

A. Which one you call Larry, that one with the coat on the one with the coat off.

Q. The one with the coat off, where did you see him?

A. He came and got in the car. The fellow was backing out, a blond headed boy driving.

Q. Did you ever see either one of these three boys in the bar?

A. That boy done the robbing didn't go in there.

Q. When you say the boy done the robbing, you have to point him out?

A. The one sitting over there.

Q. In the middle?

A. Yes, sir.

Q. Larry Hudson, where did you first see him?

A. He came running up street hollering, "Let me go with you".

Q. Who did, Larry Hudson?

A. Yes, sir.

Attorney McGeachy: Objection as to the other two, as it was not in their presence. I will try to take on all three as long as their interests don't conflict.

Court: Let me suggest that you go back to the Flamingo [fol. 5] Bar and start over again and see if you can't make it a little clearer.

Questions continued by Attorney Blackwell:

Q. Now, Mr. Spell, when you were at the Flamingo Bar, did you see either one of these three in the bar?

A. No, sir, I did not.

Q. All right, when you came out of the Flamingo Bar, did you see either one of these three boys?

A. I think the one sitting on the end, has on the red jacket, patted me on the shoulder and said, "Where you going, Buddy!"

Objection by Attorney McGeachy, "Unless he knows."

Q. Do you know that was the one?

A. His face looks very familiar to me.

Q. Can you say today that the man sitting over here by the name of Ray Starling is the same one who came up to you that night outside of the Flamingo Bar?

A. Yes, sir.

The Court: His name is what?

A. Ray Starling.

Questions continued by Solicitor Blackwell:

Q. What did he say to you at that time?

A. He proposed to take me to the house.

Court: This is competent only as to the defendant Ray Starling, not as to the other two defendants.

Q. Go ahead and tell what he said.

[fol. 6] A. "What about taking you home? Where you live?" And he said, "I take you for a buck," and I said, "That is cheaper than walking."

Q. He was going to take you home, where you live for a dollar?

A. Yes, sir.

Q. Did he have an automobile?

A. I guess it was his; I didn't ask him.

Q. After you had some conversation—

Objection by defendants.

Q. Did you have some conversation with him? If so, then what did you do?

A. We got in the car and started for home.

Q. Who was in the car with you when you started for home?

A. Won't anybody but just those two.

Q. Just you and Ray Starling, the boy on the end?

A. Yes, sir.

Q. After you got in the car, did anybody else get in the car?

A. The boy sitting there, the second boy.

Q. Larry Hudson?

A. He came running and hollered, "Wait", like he was getting left or something.

Q. Did he also get in the car?

A. Yes, sir, got in the front seat.

Q. Where did he sit?

[fol. 7] A. Sat in the front seat.

Q. Where were you sitting?

A. Back seat.

Q. Who else got in the car, if anybody did?

A. Well then, the fellow on the end of the table got in the back seat and the blond headed boy was setting under the wheel and the car cranked and headed for home.

Q. You say a blond headed boy?

A. I ain't seen him.

Q. How many people were in the car altogether?

A. There was four of us.

Q. Just four altogether?

A. Right.

Q. Now, Mr. Spell, before you got in the car, how many beers had you had to drink?

A. Well, I drink three.

Q. All right, after you got in the car with these two boys Ray Starling and Larry Hudson, where did you go?

A. Down to Liberty Point and they wanted a pint of liquor and I wouldn't get it because I figured they were under age.

Q. You did not buy any liquor?

A. No.

Q. After that what did you do?

A. Left there and headed down 301 for home and got out beyond the Patrol Station.

[fol. 8] Q. You mean Highway Patrol Station?

A. Yes, sir. Took the first road to the left.

Q. Where did that road lead to?

A. Down what I call a plain dirt road and the first road they come to, to the right, over the second hill and ducked in like they were trying to hide something.

• Objection by defendants.

Court: Just describe what they did.

Questions continued by Solicitor Blackwell:

Q. After you got out on the road, what happened then?

A. They stopped the car and turned the lights on park and said, "Are you able to get out?" and I said, "Yes, sir," and one of them opened the door to the front.

Objection by defendants, "Unless he designates which one."

Q. Which one opened the door, if you know?

A. The blond headed boy driving the car that night.

Q. The blond headed boy driving and we don't know who he is at this time?

A. Right.

Q. After the car door opened, what happened then?

A. They all come around to the front of the car while I was stepping out and told me to hit the ground and hold my hands up. The boy sitting there with the blue shirt, he crawled out of the front seat into the back.

Q. He told you to do what?

[fol. 9] A. "When you hit the ground, hold your hands straight up; don't get up," and I said, "Yes, sir."

Q. What did you do?

A. I stepped out.

Q. Did you hold your hands up?

A. Certainly.

Q. When you held your hands up, what happened?

A. He walked up to me and searched every pocket I had and took the billfold and money that was in it, two fives and a ten.

Q. You mean Larry Hudson did that?

A. Yes, sir; Larry Hudson.

Q. Did you have any money in your billfold?

A. Yes, sir.

Q. Do you remember how much you had in your billfold?

A. Well, I had a ten dollar bill, two fives and four ones and eighty-five cents in change, all told.

Q. Did he take your billfold at that time?

A. Yes, sir.

Q. Did you ever get your billfold back?

A. No, sir.

Q. After he took your billfold, what happened then?

A. He turned around and headed—the fellow driving the car said, “Get in the car and we’ll drag him,” I understood them.

Q. Will you repeat that?

[fol. 10] A. He just searched my pocket and after he could not find any more money, he turned around and two were standing with fists balled up like if I give any trouble they would do something else.

Court: Just tell what they were doing. You can’t tell what it was like to you or your opinion about that. Just describe how they were standing and what they did. Go ahead.

A. Two were standing in front of me to keep me from causing any trouble and he walked between me and them and walked all around feeling my pockets.

Q. Who did that?

A. The boy in the middle?

Q. The one in the middle?

A. Mr. Hudson, that is right, yes, sir.

Q. And after he got your wallet, what did he do then, Mr. Spell?

A. Turned right short, took two steps in the car and drove off.

Q. Did you see them again that evening?

A. Yes, sir.

Q. Where did you see them the next time?

A. I got out in the streak of woods about two hours later and they rode fourteen time in a circle to see if I was still in the woods.

Q. Did they ever stop?

A. No, sir, just slowly dragging through.

[fol. 11] Q. What did you do after they left?

A. Come on down through the woods out to the main road and out to a man’s house and they were stalled over in the sand there and they got out of that and went on their business and I got a fellow to carry me home.

Q. When did you take out a warrant for their arrest?

A. Saturday morning.

Q. This happened when?

A. Friday night, the fifteenth.

Q. Now Mr. Spell, the best you can remember on this particular night in question, of the three defendants sit-

ting here in this court room this morning, which one do you remember seeing in the car on that night?

A. I would say the two on the end was in the car.

Q. The one on this end, Ray Starling and the one in the middle, Larry Hudson, are they the two you are pointing out?

A. Yes, sir, and the other is unknown to me.

Q. You don't remember seeing him?

A. Not in the car unless he had his hair peroxided.

Q. You don't remember seeing this man (indicating Cain)?

A. That is right.

Q. Mr. Spell, at the time your money was taken, did you in any way resist the taking of your wallet?

A. Not a bit.

Q. If anything was said to you about that time, do you remember who spoke the words to you about your wallet? [fol. 12] A. The gentleman sitting there, looking right straight in my eyes.

Q. I can't understand you, Mr. Spell.

A. The gentleman sitting there.

Q. Speak his name.

A. Yes, Mr. Hudson.

Q. The boy in the middle?

A. Yes, sir.

Attorney Blackwell: Examine him.

Attorney McGeachy: Shall I examine him for all the defendants?

Court: No, just for your own client, whatever examination you want to make. I think you probably have a conflicting interest there.

Attorney McGeachy: I do not care to ask any questions for David Cain.

QUESTIONING BY COURT

Court: I feel that it is necessary that I ask one question. I think I interrupted the witness. What conversation or what statements were made by these two boys that you identified, Hudson and Starling at the time they were standing there after they had taken your pocketbook or

taken the money out of it? What statement did they make then?

A. They didn't make no statement after we got out of the car, not to me.

Court: What statement did they make before you got out of the car?

A. That Hudson boy was in the front seat and said, [fol. 13] "I'll get back there and get him out," and the only statement he said to me, he said, "Can you get out or have I got to put you out?" And I said, "Open the door and I get out."

Questions continued by Court:

Q. What was the statement made with reference to holding your hands?

A. He just asked me to hold my hands up when I hit the ground and to keep them up until he said put them down, that was Mr. Hudson.

Q. Did he have any weapon?

A. No, sir, not as I seen, just an open hand job. He had some body guards, I would call it, standing there for help if he needed it.

Q. Were you in fear?

A. No, sir, I didn't get scared or nothing.

Q. Not at all?

A. Not a bit, didn't even get mad.

Q. You didn't offer any resistance?

A. I did not give them a bit of trouble.

Q. Why did you let them take your pocketbook if you were not afraid?

A. I figured three men are better than one, way down in the woods; they didn't even give me time to study it over, stopped the car and opened the door and flew out, just like that.

Q. You had one ten dollar bill, two fives and three—

A. And eighty-five cents in change.

[fol. 14] Q. Did they take it all?

A. Yes, sir, and my pocket knife.

Q. What was the statement you made awhile ago about the fact that they would drag you?

A. They meant they would shut the door to of the car when I tried to get back in and the one driving would take off and if I tried to hold on and get back in, maybe they would bust my face open or something like that.

Q. They didn't try to do anything like that?

A. No, but they were very nice about it.

Cross-examination.

Questions by Attorney McGeachy:

Q. Mr. Spell, have you been tried and convicted of anything in court?

A. Not nothing concerning, I would say not nothing but plain drunk one time.

Q. How many times have you been convicted for drunk?

A. Twice that I know of.

Q. Twice that you know of?

A. Yes, sir.

Q. How many other times that you don't know of have you been convicted?

A. Not any.

Q. When was that, that you were convicted for public drunkenness?

A. Christmas Day.

[fol.15] Q. And when else?

A. Five years ago.

Q. What, five years ago?

A. Yes.

Q. Now, what court was that you were convicted in, sir?

A. City Hall was first and this over here was the second.

Q. All right, what other courts have you been convicted in besides those courts for public drunkenness?

A. Not any.

Q. What else have you been convicted of besides public drunkenness?

A. Not anything.

Q. What kind of work have you been doing, sir?

A. Public work.

Q. What type of work?

A. Flat labor.

Q. Flat labor?

A. Yes, sir.

Q. What type of work is that?

A. By hand tools.

Q. Who you been working for?

A. I been working for Utah Housing Project, landscaping, setting out shrubbery and first one thing an another in yards.

Q. In fact, when the weather was so bad, you weren't working anywhere, were you?

A. Yes, sir.

[fol. 16] Q. Where were you working on the 13th day of February, if you know?

A. Out at Utah Housing Project.

Q. What kind of job did you have there?

A. Day labor, we call it.

Q. Did you work every day?

A. Every day I have been there.

Q. What did you earn?

A. A dollar an hour.

Q. A dollar an hour?

A. Yes, sir.

Q. Did you work every day?

A. Every day my folks ain't sick and I can't get there.

Q. What?

A. I work every day I am not sick.

Q. In February did you work every day when you weren't sick?

A. Yes, sir.

Q. What caused you to get sick? Did you get sick very often?

Objection by state.

Q. Did you have alcoholic poisoning?

A. No, sir, I never was that crazy about it.

Q. How, how much alcohol had you had on the night of the 14th of February?

A. Three cans of beer; I didn't have any alcohol that day.

[fol. 17] Q. How long had you been up here drinking beer?

A. I had been there I would say thirty minutes.

Q. In other words, you tossed down three cans of beer in thirty minutes, is that right?

A. Right.

Q. Well, you felt that a little bit, didn't you?

A. Well, I knowed what I was doing, as good as I do now.

Q. How did you get down town?

A. I was already in town.

Q. What?

A. I was already in town, on main street.

Q. How did you get down to main street?

A. City bus.

Q. And what day of the week was this?

A. On Friday evening.

Q. Friday evening?

A. Yes, sir.

Q. You hadn't been paid off, weren't going to be paid off until Saturday?

A. I get paid on Friday evening at 4:30.

Q. Had you been paid?

A. Yes, sir.

Q. How much had you been paid?

A. A full week's work.

Q. How much was that?

A. After everything taken out, forty-six dollars and [fol. 18] seventy-five cents.

Q. You had forty-six dollars and seventy-five cents paid to you on Friday afternoon at 4:30, is that right?

A. Yes, sir.

Q. Where did you then go after 4:30?

A. Come from out there to town.

Q. All right.

A. And from town out to the robbery and on out to where I room.

Q. I am talking about where did you come after you got paid at 4:30? What went with your money?

A. Well, they got what I hadn't spent of it.

Q. Where had you spent the other and when?

A. That evening.

Q. Whereabouts?

A. I paid some bills I owed.

Q. How much did you pay and where did you pay it? Did you owe any beer bills?

A. No, sir, I ain't that a-fire on drinking. I don't buy stuff on credit like that.

Q. What other debts did you have?

A. I had some finance running ten or twenty dollars, what I had to finance on the Frigidaire.

Q. Where did you go to pay that?

A. Well, the bill I paid that evening was around near the old bus station, across from that liquor store, a place [fol. 19] where I borrowed fifty dollars and had to pay so much a month.

Q. You operate from these places close to the liquor store, don't you, Mr. Spell?

A. No, sir, not particularly.

Q. Well, how much did you pay the finance man at the store near the liquor store?

A. Ten dollars a month.

Q. I know, but how much did you pay him Friday afternoon after 4:30?

A. Ten dollars, all that was due.

Q. Ten dollars, that is all you paid him?

A. Yes, sir.

Q. Where did you go when you left the store next to the liquor store?

A. I walked through the dime store and on down to the corner and drank my beer and was to go home.

Q. Then out of the \$46.75, you hadn't paid but ten dollars, had you?

A. Right.

Q. Did you drink the rest of it up in beer?

A. No, sir, I don't have room for that much.

Q. What went with the difference of the money, \$24.85 I believe it was, and—the money you say these boys took from you; what happened to the difference of the \$24.85 and the other money, whatever it was that you said you had been paid?

A. Well, I had spent it that evening.

[fol. 20] Q. I asked you where you had spent it and you said you had paid ten dollars at the finance company and I asked you where you had spent any other money, I am asking you that now.

A. I would have to go up and get up the bills and figure it up, I guess.

Q. Did you get a few cans of beer after you paid that ten dollars?

A. I always try to meet my appointments before I

drink a beer. I always try to pay my bills and get groceries before I start drinking beer.

Q. You know after you start drinking beer you might not have any.

A. Very naturally you won't have enough to meet all your appointments if you start drinking before you pay your bills.

Q. You drink right often?

A. Anywhere from two to three on pay day.

Q. Just on pay day?

A. Yes, sir.

Q. How much did you pay, you didn't pay five dollars each for those beers, did you?

A. No, sir.

Q. How much did you pay for the beers?

A. Fifteen cents a glass.

Q. Fifteen cents a glass?

A. Yes, sir.

[fol. 21] Q. That is forty-five cents, now where did the rest of all that money go to?

A. Well, if I can't find the bill, must have been like the rest, went with the wind.

Q. You mean to say, Mr. Spell, you don't even know where your money goes?

A. Yes, sir, I know where it goes.

Q. When did it go?

A. It went in that boy's pocket side of the table.

Q. I am not talking about that twenty-four dollars you say he got; I am talking about the other money, where did the rest go?

A. I didn't make a full week that week.

Q. Didn't you say you had been paid forty-six dollars?

A. You want to know how much I was actually paid weekly?

Q. No, I asked you how much were you paid?

A. I drewed thirty-three dollars and ninty-five cents that Friday.

Q. What?

A. I said thirty-three dollars and ninty-five cents.

Q. Now you are getting it down a little bit, to thirty-three, ninty-five, is that right?

A. I didn't have a full week.

Q. I don't care whether you had a full week or a full hour. I am asking you how much money you had, Mr. Spell. You can understand that, can't you?
[fol. 22] A. Yes, sir.

Q. Well, you had thirty-three dollars and ninety-five cents, is that right?

A. Yes, sir.

Q. And you spent ten dollars of that, is that right?

A. Yes, sir.

Q. And that left you twenty-three dollars and ninety-five cents?

A. Right.

Q. And then you spent forty-five cents for some beer, didn't you?

A. Yes, sir, they didn't give me any.

Q. They didn't give it to you?

A. No, sir.

Q. And so then after that, you did not even have twenty-four dollars in your pocket, did you?

A. Not the way you counted it here. I didn't.

Q. Well, do you know any other way you could count it up?

A. The way I first told you, was the way it would count.

Q. You say you had a ten dollar bill—

Objection by State.

Court: Let's don't go around again.

Questions continued by Attorney McGeachy:

Q. Well, actually, these boys didn't take twenty-four dollars like you swore they did, did they?

[fol. 23] A. It was in my wallet and I didn't take it out in between and I looked good with matches after they left.

Q. Why do you say they took twenty-four dollars?

A. That is what was in the billfolder that night.

Q. You haven't got one of these billfolds that manufactures money, have you?

A. No, sir, but I could use one, though.

Q. You weren't so drunk you didn't know how much money had, were you?

A. I put twenty-four dollars in the billfolder and buttoned the pocket to take home.

Q. Didn't you testify awhile ago you paid ten dollars and then in addition to that you paid some other bills and you bought three glasses of beer, isn't that right?

A. That is right.

Q. So you did not have over about one or two dollars left after you drunk up all the beer you could held in your stomach, did you?

A. I did not drink all I could hold, sir.

Q. Actually, you don't really know what happened to you this night, do you?

A. Yes, sir.

Q. You mean to say you were staggering around here on the streets and got up with a boy you never had seen before and he asked to take you home?

A. I didn't ask him; he asked me.

[fol. 24] Q. Well, you never had seen him before?

A. I seen his face quite a few times on the street, but didn't know him that night.

Q. On the way home you said you decided you wanted to stop and get some liquor, is that right?

A. (No answer).

Q. You were riding along there with three-teen age boys, you say, is that right?

A. Supposed to be men at that time of day.

Q. You mean their ages go up at dark?

A. They were in a man's place.

Q. What?

A. They were in a man's place.

Q. With three teen age boys, you wanted all to chip in and you a grown man, and you and the three teen age boys were going to drink a little liquor, is that right?

A. I told them I did not want any; anybody else could get what they wanted after they taken me to the house.

Q. You had just had three beers and you do not like liquor much, do you?

A. Liquor is better for you than beer, two to one.

Q. And you were going to feed these teen age boys liquor?

A. No, I won't, I did not even give them a beer.

Q. I say you were going to get the liquor and let them help you, weren't you?

A. They wanted me to get it for them but I did not.

[fol. 25] Q. You were going to, though, weren't you?

A. No, sir. If I got any—

Q. Why weren't you?

A. They were too young to drink.

Q. Too young to drink?

A. Right.

Q. So then you ride on out the road, is that right?

A. Right.

Q. Did you have any conversation going out there?

A. Not worth telling.

Q. Not worth telling?

A. No.

Q. When you got out there, you were feeling pretty good then?

A. Well, I didn't have no headache, sir.

Q. Well, you were just sort of rolling along, weren't you?

A. No, I was sitting, riding along like a fool.

Q. You were in one or two clouds, weren't you?

A. I knowed everything going on all right.

Q. But you weren't particularly concerned about it, were you?

A. Well, won't no use to be after they had me.

Q. You told the boys you weren't going to pay them anything for taking you home, didn't you?

A. No, sir, I did not tell them that.

[fol. 26] Q. You didn't?

A. I don't remember telling them that.

Q. Didn't you turn around and come back to Fayetteville with them?

A. I don't think they turned around but one time after I got in the car.

Q. You were with them when they turned around and came back to the liquor store, weren't you?

A. I didn't go to no liquor store.

Q. And that is when you refused to get out and chip in on the bottle?

A. No, I give the boys the dollar like he asked, to take me home. I said you can buy candy or ice cream with it.

Q. Or liquor?

A. If he wanted to it was his business, not mine.

Q. And the car started out in the country, is that right?

How far did you get from where you lived when you say you stopped?

A. I say half way from the Old Market House home.

Q. You were pretty close to home, weren't you?

A. Out of the city limits.

Q. And you were so drunk you wouldn't get out of the car, would you?

A. I never refused to get out of the car; I did not refuse.

Q. You weren't scared?

A. No.

[fol. 27] Q. You weren't upset?

A. Not a bit in the world.

Q. Didn't anybody poke a gun in your face?

A. No.

Q. Didn't anybody pull a knife on you?

A. No, sir.

Q. Didn't anybody have a weapon?

A. No, sir.

Q. And all of a sudden, you find you haven't got your billfold, is that right?

A. I did not find out, I seen him when he taken it out of my pocket when my hands were up straight.

Q. Did you say, "Son, don't take my money"?

A. No, sir, I let him go ahead.

Q. You didn't tell him, "Son, don't take my money," did you?

A. It wouldn't have done any good.

Q. You didn't say, "You ought not to take my money," did you?

A. I did not say a word.

Q. You didn't say a single word?

A. That is right.

Q. Nobody used any force or violence on you?

A. Just open hand.

Q. Nobody used any force or violence and you weren't put in fear and you weren't intimidated at all, were you?

[fol. 28] You weren't put in fear, were you?

A. No, sir, not frightened, but—

Q. There was nothing to be frightened about and then you say the boys kept circling around there until around 10:00 o'clock, is that right?

A. Yes, sir, just kept circling.

Q. Just riding around?

A. Yes, sir.

Q. Did you ever say, "Boys, how about taking me on back home"?

A. No, I won't that hard up to get home.

Q. About what time of night was that, 10:00 o'clock?

A. Yes, sir.

Q. How come you didn't walk on home?

A. I come out of the woods where they left me, over there on the road, over there where they left me, out to the four-lane drive to go home.

Q. And you are sure that around 10:00 o'clock or so, that automobile you had been in was still riding around out there?

A. No, sir, it was stuck. When I hit the road they were sitting on the corner, parked in the sand.

Q. Why didn't you get a car and come down and get an officer and go out and get the boys right then and there that had robbed you, you say?

A. They got away before I could get a way to town.

Q. What?

[fol. 29] A. They got the car out and left before I could get a car to town.

Q. Were you standing there looking at it?

A. Yes, sir.

Q. How long did it take to get the car out of the sand?

A. By my watch it was 9:45, and they were rolling and rocking it in the dead sand.

Q. And you were standing there and the boys were rolling and rocking the car in the sand?

A. Yes, sir.

Q. You didn't go near them or get a car and go for the sheriff, just stood watching them for fifteen minutes or so, is that right?

A. I was standing there slowly thinking.

Q. Slowly thinking?

A. Yes, sir.

Q. Have you thought it all out yet, Mr. Spell?

A. I have thought too much in one way and in another not enough.

Q. Now, Mr. Spell, you went on home then, didn't you?

A. Yes, sir.

Q. You went on in and went to sleep, didn't you?

A. Yes, sir.

Q. Tried to, I didn't sleep very much that night. I figured they needed it worse than I did.

Q. You didn't even come to see any law enforcement [fol. 30] officer, sheriff or anybody else until sometime the next day, did you?

A. I caught the first bus coming to town the next morning, twenty minutes to ten, and came in and reported it.

Redirect examination.

Questions by State (Assistant Solicitor Blackwell):

Q. Mr. Spell, the boy that took your wallet from you, why did you let him take it?

A. I couldn't help myself, with my arms straight up like that and one standing behind to help him if I give any trouble.

Further cross-examination.

Questions by defendant Larry Hudson:

Q. Don't you know that the Flamingo Bar has been closed about three months, the bar you claim you were in?

A. The second one was open when I come by.

Q. When you walked by the Flamingo Bar this morning, you say it was open?

A. The second store from the old Market House was.

Q. You said the Flamingo Bar.

A. The second bar place from the old Market House, I did not know the name.

Q. Didn't you say awhile ago it was the Flamingo Bar?

Solicitor Blackwell: I think he said that.

A. The second door; you can go and see.

Questions by Attorney McGeachy:

Q. Mr. Spell, were you tried and convicted right across the hall here for hitting Roy Soles in the head with an axe? [fol. 31] A. Sir?

Q. I said, weren't you tried and convicted right across the hall here for hitting Roy Sole in the head with an axe?

A. I was tried but this is the first time of me knowing about an axe. Yes, I was tried for hitting him but I didn't hit him with no axe.

Q. What were you convicted of hitting him with?

A. I hit him with my fist.

Q. What were you convicted of hitting him with?

A. I don't remember right now.

Q. You didn't tell us about that when I asked you what you had been convicted of, did you?

A. No, sir, we didn't get into it.

Q. Let's get into it right now. Now what else have you been convicted of?

A. I guess that is all. I guess that is all I can place.

Q. Have you ever been up to Dix Hill?

A. Yes, sir.

A. How long were you up there?

A. Eighteen months.

Q. Didn't you testify in Recorder's Court that you thought you had or had not seen the boy Larry Hudson before?

A. No, sir.

Q. What, sir?

A. No, sir.

Q. Do you say you have ever seen this boy Larry Hudson [fol. 32] son before the night in question?

A. He is the one done the robbing.

Q. I know he did, Mr. Spell. I am asking before that time had you ever seen him any time before then?

A. Nothing only just walking around on the street.

Q. Had you ever spoken to him before then?

A. No, sir.

Q. Had you ever seen him before then to notice him?

A. Just saw him on the street walking.

Questions continued by Larry Hudson:

Q. Do you remember what kind of clothes the defendant had on, the one supposed to have robbed you?

A. Sir?

Q. Do you remember the kind of clothes the defendant had on, the one supposed to have robbed you?

A. I did not examine them.

Q. Do you know what they looked like?

A. The automobile didn't have no light on or nothing when you all drove off and left.

A. If you didn't see the kind of clothes, how can you say it was us or me?

A. You had on a blue check shirt, kind of like a checker board, that night.

Q. Are you sure?

A. Yes, sir.

Q. You got up in Recorder's Court and said that you [fol. 33] thought you had seen me somewhere before but you won't sure.

Objection by State.

Court: You may ask him the question if he did that.

Questions continued by Larry Hudson:

Q. Didn't you say you thought you had seen me somewhere before but you weren't sure? You were under oath over there and you are under oath now. Answer my question.

A. I guess I did say it. Now I studied over that.

Q. That is what you said?

A. Yes, sir.

Q. This is my home, Mr. Spell—

Objection by State.

Court: Ask him any questions you want to, but be sure they are questions. I am not trying to cut you off; go ahead and ask him any questions you want to ask, but so far as testifying, you have to take the stand to do that.

Questions by Ray Starling:

Q. You say we were out there until about ten o'clock?

A. Yes.

Q. And when did we get stuck?

A. Absolutely, you stalled in dead sand on the curve.

Q. What time was it when we got stuck?

A. I wasn't quite out to the road and it was a quarter to ten and I looked at you fifteen minutes.

Q. What time was it?

A. Quarter to ten by my watch.

[fol. 34] ELMER ARNETT, a witness for the state, being first duly sworn, testified as follows:

Direct examination.

Questions by State (Assistant Solicitor Blackwell):

Q. You are Mr. Elmer Arnett?

A. Yes, sir.

Q. And you are a deputy sheriff of this county?

A. Yes, sir.

Q. Mr. Arnett, how long have you been in law enforcement in this county?

A. Around twenty-five years, or better.

Q. Were you acting in your capacity as law enforcement officer about the 14th day of February, 1958?

A. Yes, sir, but I was off duty that day.

Q. Did you have occasion to investigate this particular case, Mr. Spell has related from the stand?

A. Yes, sir.

Q. Did you talk with Mr. Spell about this case?

A. Yes, sir, I did.

Q. Will you relate what Mr. Spell told you about this particular case?

A. Yes, sir.

Court: Gentlemen of the Jury, this testimony about to be offered by the officer as to what the witness Mr. W. G. Spell, who testified on the stand, told him, is offered only and exclusively for the purpose of corroboration of the [fol. 35] witness Spell, who has already testified, if you find that it does corroborate him and for no other purpose. All right, go ahead.

A. Yes, sir, I did.

Q. Go ahead and relate what he told you?

A. I talked with Mr. Spell on the morning of the 17th.

Q. What day was that on?

A. On Monday.

Q. All right, go ahead.

A. The 17th of February. Mr. Spell, he stated that on February 14, about 7:00 or 7:30 p.m., he met the boy at the Cash & Carry Store on Gillespie Street.

Attorney McGeachy: Objection to that, because it does not in any way corroborate any statement made by Mr. Spell.

Court: He hasn't finished yet. I don't know whether it will corroborate him or not. When he finishes telling everything that was said, if it does not, I will so instruct the jury. Go ahead.

A. Mr. Spell stated he was going home and one of the boys asked him was he going home, which was a Grimsley boy, we later found out—

Objection by defendants, sustained.

Court: Sustained as to that. Now Mr. Sheriff, go ahead and tell just what the witness told you as near as you can. Of course do not consider that last statement in any way, Ladies and Gentlemen of the Jury. Go ahead.

A. He stated that he lived approximately at the intersection of the Chicken Road on 301 South and that the boy told him he would take him home for one dollar. The boys got into the 1953 light blue car and started on 301 South, where they got to the East Mountain Drive. They went down it and stopped and one asked him to get out of the car and Spell asked what did he mean and one said, "Give us your money." He got out of the car and his billfold, which had \$24.85, then taken it off from inside his coat pocket, one of the boys. He stated that after the car left, he stood in the edge of the woods and they passed several times before he left the scene of the woods. He said he was scared they would come back and try to do him bodily harm.

Q. Now Mr. Arnett, did he give you the license plate number?

A. Yes, sir, he did.

Q. Do you know what that number is now?

A. Yes, sir, I have it.

Q. Well, Mr. Arnett, did you find out whose car that license plate was on?

A. Yes, sir.

Q. Whose car was it on?

Objection by defendants.

Court: It would depend on how he found it out, I suppose.
Solicitor Blackwell: I asked if he did find out.

Court: You can ask whether or not he found out. The next question, I do not know. Go ahead.

[fol. 37] A. Yes, I did.

Q. As result of anything that you did find out, what did you do, Mr. Arnett?

A. Well, myself and Mr. Snipes went over on 301-A North, and talked to David Cain at his house on Monday.

Q. Now, when you say David Cain, who do you mean?

A. That is the boy sitting right next to Mr. McGeachy.

Q. All right, go ahead.

A. He stated that—he was warned of his rights, to get the record straight.

Attorney McGeachy: I object in behalf of the other boys to any statements by David Cain.

Court: Members of the Jury, do not consider this testimony if it has to do with any conversation between the deputy sheriff, Mr. Arnett and the defendant David Cain, do not consider that as against the co-defendants; I overrule it only as against the defendant Cain, if you find it is against him.

Questions continued by Attorney Blackwell:

Q. What statement, if any, did he make to you?

A. He stated that he had not been with no one at no time concerned the robbery. We talked to him for some little bit and we left. We later secured the license number of the car, which a note was left in my box. We went back, Officer Snipes and myself and talked to David Cain at his house, warned him of his rights, and also while we were there we checked his license, which was issued to a 1953 Ford, XP [fol. 38] 589. Then he made a statement he was the driver of the car.

Q. You say the driver of the car, go ahead and describe to the jury what you mean?

A. He was driving the car which left Gillespie Street, with four boys in it.

Q. What did he say happened after he said he was the driver?

A. He stated that he asked Mr. Spell when he saw him, was he going home and he stated he was and he said he would carry him home for one dollar.

Q. That is David Cain you are talking about?

A. Yes, sir.

Q. All right, go ahead and tell us what he told you?

A. He got in the back of the car, and there was three more boys.

Q. Did he name them?

A. No, sir, well, he did later on, yes, sir.

Q. Who were the other three boys in the car?

A. It was Larry Hudson, Ray Starling and Rubin Grimsley, which is a juvenile, which is now turned over to the juvenile authorities.

Q. All right.

A. Myself and Mr. Snipes brought him and the Grimsley boy up, which the Grimsley boy admitted the same thing in the office.

Objection by defendants.

Court: Objection sustained. Do not consider that state-[fol. 39] ment at all, Gentlemen of the Jury.

A. We did not talk to Larry Hudson or either Ray Starling. They were picked up that night and we talked to them the following day. The following day we talked with Larry Hudson in the office. He denied everything, denied knowing anything at all about it. We told him well, we would take him up and face Ray Starling. He said he had a way of knowing that Ray wasn't in jail; he was up on the fourth floor and he had a way of contact through the trustees and we told him we would go up and see. We carried him on the third floor and he went back to the cell which he was at.

Q. Who was that?

A. That was Ray Starling, where he was at. We asked Ray about it.

Attorney McGeachy: Objection to all this as far as David Cain is concerned. (Sustained.)

A. It was in the presence of Larry Hudson.

Court: As to the defendant David Cain, do not consider this testimony, Members of the Jury.

A. I asked the question, which one got the pocketbook. Ray Starling told me that he was the one got the pocketbook himself, out of Mr. Spell's inside coat pocket. Larry Hudson said, I mean there was a little question there between them and Starling said, "Well, Larry, you know you were the one climbed over the back seat. You didn't get the pocketbook, but you told the man to step out." We [fol. 40] told him, "Well, let's go back upstairs." Larry looked at Ray Starling and told him, says, "Ray, when you see the damn law, you tell him you don't know nothing in the world about this or never have heard nothing." And I said, "I appreciate that very much, Larry."

Q. Now, Mr. Arnett, at the time you questioned David Cain, did you go into detail in his statement, as to how this thing took place?

A. Yes, sir. David told me they were going to start to go out there to take the man home and why he did it he didn't know, said he turned off there, said he was sorry he done it and when it was all over with there was a little difference in the amount of money that was gone. David and the Grimsley boy made a statement it was only two dollars and ninety cents. Ray Starling and Hudson, while we were questioning them, they made a statement that it was approximately four dollars in money.

Q. Did either one of the three boys ever state to you what happened to the wallet?

A. No, sir, that was when we were working very hard to try to find out where the wallet went, one, I believe the Cain boy told me at the time we were questioning him, that he was under the opinion that Larry Hudson is the one that had the pocketbook and throwed it out on the right of the road coming in towards Fayetteville, on a by-pass.

Objection by defendant Larry Hudson; sustained.

Court: Yes, I do not believe that would be competent [fol. 41] evidence.. Strike that from your consideration.

Questions continued by Attorney Blackwell:

Q. Mr. Arnett, did either one or all three of these boys give you any statement as to the condition of Mr. Spell at the time they saw him?

A. Well, sir, they all said that—I believe they had been around there when he was drinking. Some of them stated that they had been drinking some beer, too.

Q. On this same night?

A. Yes, sir.

Q. What did they say was his condition at the time he got in the car this particular night?

A. No, sir, the only thing, they just said he had been drinking before they picked him up.

Cross-examination.

Questions by Attorney McGeachy.

Q. Mr. Arnett, do you know whether or not anything was said about turning around and coming back to buy some whisky?

A. Not to me, no, sir.

Q. Did you hear that statement made to anybody?

A. I am not positive, seems like that statement came out in Recorder's Court, something like that and I heard it just up here.

Attorney McGeachy: No further questions by David Cain.

Court: Larry Hudson, do you have any questions?

Defendant Hudson: No, sir.

[fol. 42] Court: Ray Starling, do you have any?

Defendant Starling: No, sir.

Questions by Court:

Q. Mr. Arnett, I did not get the name of the other boy the defendant Cain was with?

A. Rubin Grimsley, I believe.

Q. Grimsley?

A. Yes, sir?

Q. In your investigation did you arrest Rubin Grimsley?

A. Well, sir, we picked him up and questioned him and made out a complaint and turned him over to the juvenile

court, which he is supposed to be before Mr. Williams' office Friday.

Q. He is below sixteen?

A. Yes, sir, he is fifteen.

Q. What amount of money did Cain tell you was taken?

A. Two dollars and ninety cents; there was a little difference in there, in different statements.

The witness is excused.

J. D. SNIPES, a witness for the State, being first duly sworn, testified as follows:

Direct examination.

Questions by State (Attorney Blackwell):

Q. You are Mr. J. D. Snipes, Deputy Sheriff of Cumberland County?

A. Yes, sir.

[fol. 43] Q. I believe that is your day off? It is not?

A. Yes, sir.

Q. Mr. Snipes, did you and Mr. Arnett work together investigating this case?

A. We did.

Q. In the process of your investigation, did you have occasion to talk to David Cain?

A. We did.

Q. Go ahead and relate to the jury what he told you?

A. We checked by David's house in the morning part, somewhere between nine and twelve o'clock. We saw the automobile sitting there. We pulled in and asked for David; he came out and got in the car. We talked to him concerning the case. He denied knowing anything about it or hearing anything about it. We told David that if things proved out, we would be back. In the afternoon me and Mr. Arnett went back to David's. He come out and got in the car and we talked to him. He wholeheartedly admitted it.

Objection by defendant David Cain.

Court: Just tell what he said. Gentlemen of the Jury: here again you must not consider the statement of the defendant Cain as against the other defendants in the case because they were not present when the statement was made and had no opportunity to deny it or say anything about it.

so do not consider it against the other defendants. Go ahead.

A. He admitted being in town that particular night that [fol. 44] it occurred and with him was Larry Hudson, Ray Starling and the Grimsley boy. They picked Mr. Spell up to carry him home for a dollar. On the way out somebody suggested getting a pint; they turned around and came back, pulled into Person Street and stopped, but they did not buy any whisky. They turned around and went out 301 South, got below the Board of Education Building and they turned to the left on the dirt road and went back into the woods and in the meantime Larry Hudson crawled from the front of the car to the back seat. Ray Starling was sitting in the back with Mr. Spell at the time. And when they stopped, they got out of the car and Mr. Spell had his hands up above his head; they frisked him down and drove off and left him. He said he got approximately a dollar and ninety cents. The following day when we came in the night boys had picked up Larry Hudson and Ray Starling. We talked to Ray Starling. He admitted being with them.

Objection by defendants.

Court: Strike that; that is not proper. Members of the Jury, here again, you will consider this evidence against the defendant who is making the statement only and any other defendant, not in his presence, you cannot consider this testimony against him. Were either of the other defendants present?

A. Ray was by himself.

Court: Consider it only as against Ray Starling.

A. He admitted being with them and stated about the same as I have told. We carried him back up to the cell, [fol. 45] got Larry Hudson and brought him down. Larry denied it. We told him we would carry him up and let Starling face him. We talked to Starling further and we carried Larry back up to the cell and faced him in front of Larry and Starling told Larry, "You might as well go ahead and admit it; they have us." And Larry said, "The best damn thing you can do when you get in the court room is tell that d— judge nothing."

Objection by defendant Cain.

Court: Do not consider this testimony against the defendant Cain. Go ahead.

A. And so Mr. Arnett spoke up and said, "I appreciate your saying that." And we carried Larry on upstairs and locked him up.

Cross-examination.

Questions by Attorney McGeachy:

Q. Mr. Snipes, they did tell you that the turned around and came back for Spell to buy some whisky at the whisky store?

A. They didn't say Spell; they said they turned around and came back to get a pint.

Q. Well, Spell was in the automobile at that time, they said, wasn't he?

A. Yes, sir.

Q. They said they came back to the liquor store and stopped, didn't they?

A. Yes, sir.

[fol. 46] Q. Now, did they tell you how much Spell had been drinking?

A. No, sir.

Q. Did your investigation disclose how much Spell had been drinking that night and what condition, whether or not he was intoxicated?

A. No, sir, the question arose as to drinking beer and nobody made any statement at all as to the amount, the condition he was in or anything.

Court: How about the defendant Hudson, do you want to ask the witness any questions?

Defendant Hudson: No questions.

Court: The defendant Starling?

Defendant Starling: No questions.

The witness is excused.

RUBIN GRIMSLEY, being called as a witness for the state, declined to testify.

Court: That is entirely up to you.

The state rests.

MOTION TO DISMISS AND DENIAL THEREOF

Attorney McGeachy: I would like to move, at the close of the State's evidence, that the case be dismissed; (motion overruled), exception.

Attorney McGeachy: There is no evidence for the defendant Cain.

Larry Hudson: I would like to take the stand.

[fol. 47] Attorney McGeachy: At this time, on behalf of the defendant David Cain, we tender to the state a plea of guilty of larceny, in such amount that it is a misdemeanor.

Attorney Blackwell: That is acceptable to the state.

Court: Proceed with the other defendants.

RAY STARLING, being duly sworn, testified as a witness for himself as follows:

Attorney Blackwell: All right, go ahead and make any statement about this thing you want to.

A. The night of February 14, me and Larry and David and Rubin Grimsley were riding around drinking and about 7:30 we picked Mr. Spell up and were going to take him home and went by the liquor store and got a pint of vodka. He paid for it and counted the change out in Larry's hands. We left the liquor store and stopped down here to the Texaco Station on 301 South and got some chasers. We drunk that pint and we went on and turned on this dirt road. Mr. Spell started puking all over the car and we told him he had to get out and when he got out, we left and me and Larry got in the back seat and David and Rubin were in the front seat and before we got out to the highway, I found this billfold and I opened it up and there was nothing in it and Larry suggested that we go back and give it to him and we went back and didn't see him nowhere and so we got out and hollered for him and he wouldn't answer and so we went over to the Cross Creek Court Recreation Center and it was about eight [fol. 48] o'clock and I was pretty drunk and the deputy on

duty over there told David and them to take me home between eight and eight-thirty.

Court: Is that all?

A. Yes, sir.

Court: All right, examine the witness.

Cross-examination.

Questions by state (Attorney Blackwell):

Q. Now Ray, you have just got off the roads, have you not?

A. Right.

Q. What was that for?

A. A check.

Q. A bad check?

A. Yes, sir.

Q. Where was that?

A. Florida.

Q. What else have you been on the roads for?

A. I don't know what it was for, but they had me for drinking, drunk and carrying a concealed weapon and I don't know which one they give me time on.

Q. You were convicted of that, though, were you?

A. Yes, sir.

Q. And you have been convicted of being drunk in 1953, weren't you?

A. Right.

Q. How old are you now?

[fol. 49] A. Twenty-three.

Q. Now, you were convicted in Wilmington, were you not?

A. Yes, sir.

Q. What was that for?

A. Larceny.

Q. Were you convicted in Elizabethtown?

A. I don't think so.

Q. You don't think so; you do not remember?

A. I remember being tried but I don't know whether I was convicted.

Q. In other words, you have been in a court so much you don't know when they turn you loose or when they convict you?

A. I do.

Q. Did they convict you in Elizabethtown, or didn't they?

A. I think they give me a suspended sentence.

Q. They did convict you, then?

A. I wouldn't swear to it.

Q. Now, on this particular night in question, you say you had been drinking?

A. Right.

Q. Had Larry Hudson been drinking?

A. Yes, sir.

Q. Had David Cain been drinking?

A. Not much.

Q. But Larry had?

A. Maybe he had taken a couple of drinks.

[fol. 50] Q. And you did that before you got up with Mr. Spell, didn't you?

A. Yes, we have some to drink before we got up with him.

Q. In other words, it wasn't Mr. Spell's idea for you all to go out drinking?

A. No, he offered to buy us a pint.

Q. Did he buy you a pint?

A. Bought us altogether one.

Q. Bought it altogether?

A. Yes, sir.

Q. He paid for it with his money?

A. Yes, sir.

Q. You did not pay for anything?

A. No, not after we got up with him.

Q. And Larry didn't pay for anything?

A. No, sir.

Q. And David Cain didn't pay for anything?

A. No, sir.

Q. All the money used after you picked up Mr. Spell was Mr. Spell's money?

A. Maybe a chaser.

Q. How much did you all drink after you picked up Mr. spell?

A. That pint of vodka.

Q. And you say you did go out to 301 with these boys and Mr. Spell?

[fol. 51] A. Right.

Q. And did you go off by the Highway Patrol camp?

A. I don't know where it was.

Q. Out in that vicinity?

A. I guess so.

Q. And you say Mr. Spell got sick?

A. Right.

Q. And that is the time that he lost his billfold, is that right?

A. I didn't say that.

Q. Isn't that the time he lost it?

A. He lost it in the car, yes.

Q. Lost it in the car?

A. Yes, sir.

Q. How much money was in it?

A. None.

Q. What did you do with the wallet?

A. I threw it away.

Q. Threw it away; you did not keep it to give it back?

A. We went back to look for him.

Q. How many times did you look for him?

A. Twice.

Q. Did you see him?

A. We went back to see if we could see him and we called and he wouldn't answer.

Q. Now, you told Mr. Arnett and Mr. Snipes that you [fol. 52] had taken the wallet, didn't you?

A. No, sir.

Q. Now, you heard Mr. Arnett and Mr. Snipes testify?

A. I did.

Q. And you say you did not tell them that?

A. I did not tell them that, no, sir.

Q. And did Larry Hudson in your presence make the statement that the officers said he did?

A. No.

Q. He didn't make that statement. Any of the things the officers got up on the stand this morning and testified to, as to the statement that you made—did you make a statement to them?

A. Yes, sir, I told them I found the billfold and told them I threw it out.

Q. And after you told them that, that you found it and threw it out, they arrested you for robbery of Mr. Spell, is that right?

A. That is right.

Q. Where did you throw the billfold?

A. Somewhere on 301, somewhere the other side of the underpass.

Q. Where did you find the wallet?

A. In the back seat.

Q. Just loose on the seat?

A. Yes, sir, down in it, almost went behind the seat.

[fol. 53] Q. When Mr. Spell got sick, did you get out of the car?

A. We all got out.

Q. You all got out of the car. What did you say to Mr. Spell after you got out of the car?

A. I don't remember.

Q. What did he say to you?

A. I don't remember.

Q. Did he have his hands above his head?

A. No, sir.

Q. Did you ever tell him that you wanted his money?

A. No, sir.

Q. Never said anything to him at all?

A. Only when we got the liquor.

Q. And that was all that was said to him all evening?

A. We talked.

Q. How long did you remain outside of the car?

A. Well, he got out. He fell down on the ground and we got back in the car and left.

Q. You left him there?

A. That is right.

Q. In other words, all you did was stop long enough to put him out?

A. No, we went to the bath room.

Q. Relieved yourself?

A. (No answer).

Q. And you just stopped long enough for that and got [fol. 54] back in the car and left him there?

A. That is right.

Q. Why did you leave him there?

A. He was drunk and puking all over the car.

Q. Were you drunk?

A. Yes, sir.

Q. Why didn't you get out and stay?

A. Well, when I puked on the car, they took me home, too.

The witness is excused.

LARRY HUDSON, being first duly sworn as a witness for himself testified as follows:

On this certain Friday night, I do not know what the date of it was, about 6:00 o'clock, I was in the D & W Soda Shop on the corner. I was in there drinking a Coca Cola and David Cain and Ray Starling and Rubin Grimsley come in. They sat down and drunked a Coca Cola and they got up and started to leave and Ray asked me, said, "You want to go with us, Larry?" I said, "Where you going?" And he said, "We are going to get something to drink," and I said, "Well," I says, "I might as well; I ain't got nothing else to do." We went and got a pint of vodka and we drank that and we come back down, me, Ray Starling and and David Cain. We went into the Aster Bar, went into a rest room. Mr. Spell was in there. He was in the bath room in the Aster Bar. When we come out, he come out [fol. 55] with us and David, I mean Ray Starling asked him where he was going and he said he was going home. He said, "we will take you home." He asked him did he want him to take him home and he said, "yes", so they all went and got in the car and I come on to the car in a few minutes and got in and I spoke to somebody on the street that I knew. And somebody asked him did he have enough for a pint and he said yes, he would like to have a drink and he counted it out, the money, to me and I was in the front seat and I reached around. He counted out the money to me to buy a pint of vodka and it was two dollars and something; I don't know exactly how much it was. I give it to Ray Starling and he went in and got it, come back to the car and we started out 301 towards his house. We stopped at Pope's Texaco Station and bought two Coca Colas for chasers. Mr. Spell, he got sick and started throwing up all over the back seat of the car and David Cain, the the boy that the car belonged to, he got mad because he was messing his car up and said he was going to put him out. Somebody said, "Well, take him off the road; he is so drunk he can't stand up; he might stand up there and get run

over," and so we drove off the road and put him out. All of us got out and went to the bath room, and we got back in the car and left. When we got out on the highway, Starling said, "I found his billfold back here," and he threw it out, won't nothing in it. I said, "Well, let's take it back to him." So he turned the car around, the Cain boy did, and went back and we looked for him and we didn't see him [fol. 56] no place along the road. We got out where we let him out and hollered for him; he did not answer; so we figured he had staggered off somewhere down in the woods and passed out. So we left and Starling threw his billfold out of the car and they took me over to Cross Creek Recreation and left me. That was about eight o'clock. That is it.

Cross-examination.

Question by Attorney Blackwell:

Q. How old are you, Larry?

A. Eighteen.

Q. How many times have you been convicted in your life, of anything?

A. I have been convicted of breaking and entering, one time. I was convicted of driving under the influence of liquor last court.

Q. What else?

A. That is all.

Q. Now were you convicted of assault and disorderly conduct in 1958?

A. No, I am not.

Q. Were you convicted of a simple assault?

A. I was convicted of simple assault but I appealed.

Q. Is that in this court at this time?

A. Yes, I guess so.

Q. What else have you been convicted of?

A. That is all.

[fol. 57] Q. You were convicted of careless and reckless driving?

A. Yes, I was convicted of careless and reckless driving in 1958.

Q. And on the breaking and entering charge, you were sent to training school, weren't you?

A. I was sent to prison.

Q. Sent to prison?

A. Yes.

Q. When did you enter Eastern Carolina Training School?

A. When they sent me to prison, the sentence provided I would go up there of my own free will.

Q. Did you go?

A. Yes, sir, I did.

Q. How long did you stay?

A. Five days.

Q. You escaped, didn't you, after five days?

A. I left.

Q. They caught you, didn't they?

A. Yes, they did.

Q. You escaped again?

A. Yes, I did.

Q. And you say on this night in question you did not take this man's money?

A. No, I didn't.

Q. His wallet was lying in the back seat?

A. Yes, sir, it was.

[fol. 58] Q. And you say that you crawled over from the front seat to the back seat during the riding of the evening?

A. No, I didn't say that.

Q. Well, did you?

A. Yes, I did.

Q. When did you do that?

A. That was after we went and got the liquor. The Cain boy said, "How about climbing over in the back seat so I have more room to drive?" There were three of us in the front and two in the back seat.

Q. And you did climb over?

A. Yes, I did.

Q. And you sat beside Mr. Spell?

A. Yes, sir, that is right.

Q. You got out in the woods when you stopped and put Mr. Spell out?

A. Yes, I did, when they all got out.

Q. All of you got out, did you?

A. Yes, sir.

Q. And Mr. Spell got sick?

A. Yes, he did.

Q. And you left him there?

A. Yes.

Q. But at no time while you were standing outside of the car, did you take his wallet?

A. No, I have not took his wallet and I do not think [fol. 59] nobody else has took it. If anybody has, I don't know nothing about it, if anybody has been robbed.

Q. What did you do with his wallet after you found it?

A. I did not find it.

Q. After it was found?

A. I didn't do nothing with it.

Q. What did you see done with it?

A. I seen it threw out the window.

Q. Who threw it out the window?

A. Ray Starling.

Q. The boy right here?

A. Yes.

Q. Who found it?

A. He did.

Q. Now, he was on the front seat?

A. No, he was on the back seat.

Q. Who was on the front?

A. David Cain and Rubin Grimsley.

Q. And that left you and Starling in the back seat with Mr. Spell?

A. Mr. Spell won't in the back seat when he found the billfold.

Q. He was before that, was he?

A. Yes.

Q. And you and Starling were with him at that time?

A. That is right.

[fol. 60] Q. And you say you threw the wallet—the wallet was thrown out the window?

A. Yes, sir.

Q. But before you did that, you went back to see if you could find Mr. Spell?

A. Yes, sir.

Q. But you did not find him?

A. No, sir.

Q. Did you go back in the woods and look for him?

A. No, we didn't go back up in the woods and look for him; it was dark out there.

Q. You went up there the first time, didn't you?

A. We got out and hollered at him.

Q. When you went up the first time, you carried Mr. Spell up there, it was dark, wasn't it?

A. Yes, sir.

Q. And you put him out?

A. He got out.

Q. You didn't let him back in?

A. He did not offer to get back in and it won't my car and I didn't have nothing to do with him getting back in or out.

Q. You don't know anything about the case at all except you found a wallet?

A. I was in the bunch. I don't know nothing about nobody being robbed, nobody ain't been hurt and nobody ain't [fol. 61] been robbed, as far as I know. We were all just out trying to have some fun.

Q. Drinking liquor?

A. Yes, sir.

Q. And you didn't tell Mr. Arnett in the presence of this fellow Starling, that the best thing for him to do was not to tell that d— judge anything?

A. No, sir.

Q. You didn't make that statement to Starling in the presence of Mr. Arnett or Mr. Snipes?

A. No, sir.

Q. I ask you one more question, did not Starling tell you in the presence of Mr. Snipes and Mr. Arnett, that you were the one took the wallet?

A. No, he did not.

Q. He did not tell you that he, himself, was the one took it out of Mr. Spell's pocket?

A. No, he did not. He said he found the billfold.

The witness is excused.

The defendants Starling and Hudson were given an opportunity to argue their case to the jury.

The Court then charged the jury:

CHARGE TO JURY

Members of the Jury, in this case it is charged that on the fourteenth day of February of this year the defendants Larry Hudson and Ray Starling, did with force and arms, [fol. 62] at and in the county aforesaid, unlawfully, wilfully and feloniously rob and take \$24.00 in U. S. Money from the person of W. G. Spell, the property of W. G. Spell, without his consent and against his will, by violence, intimidation and putting in fear, against the form of the statute in such case made and provided and against the peace and dignity of the State.

This bill of indictment charges these defendants now on trial with committing the crime known as common law robbery which is the felonious taking of money or goods of value from the person of another or in his presence against his will by violence or putting him in fear. An indictment for common law robbery will support a conviction of the lesser offense of larceny from the person if there is evidence of guilt of such lesser offense.

So in this case you may return one of three verdicts: 1. Guilty as charged, that is, of common law robbery, 2. guilty of larceny from the person or 3. not guilty.

The defendants are not charged with robbery with firearms, which is made a more serious crime by statute in this state.

Now to the charges contained in this bill of indictment both defendants have entered a plea of not guilty, and upon that plea, these defendants, as is true with any defendant [fol. 63] so pleading, are protected and surrounded by what is known in law as a presumption of innocence, which simply means that they are presumed to be innocent of any and all charges unless and until the State of North Carolina proves to the jury beyond a reasonable doubt that they are guilty, the burden being upon the state to prove the guilt of the accused, these defendants, beyond a reasonable doubt and not a case where the defendants must prove that they are innocent. And if the state, as the prosecuting

party in this case, has failed to satisfy you the jury of the guilt of these defendants of the crime charged, beyond a reasonable doubt, that is to say, if you have any reasonable doubt about it, you will give the defendants the benefit of the doubt and acquit them.

The Court wishes to give you certain instructions about how you will look upon the evidence in the case. The jury in the first place is the sole tryers of the facts. You, the jury are to remember all of the facts, all the testimony in the case, and you are to abide by your own recollection of the testimony in the case. If there is any conflict between your recollection and that of counsel or the Court in the charge, you the jury are the sole judges of the weight and credibility of the testimony and you alone can find the facts. So as the Court proceeds with the charge and refers to matters of evidence, it will be your duty to take your own recollection and not that of the Court in case there is a conflict between the two. If you remember the evidence differently [fol. 64] from the Court, abide by your own recollection.

Now in this case, there is a sharp conflict in the testimony as to essential points in the case, and you must find what the facts are, and finding those facts apply them to the law as the Court will explain the law to be and in that way make up your verdict, which will speak the truth as to the guilt or innocence of these defendants.

Now obviously you cannot accept all of the testimony in the case as being true, however, you the jury are the sole judges of the weight and credibility of the testimony. You must take all of the testimony as you recall it and weigh it and compare it and arrive at what the true facts are.

Now you may believe all that a witness testifies to, or part of what a witness has testified to and disbelieve another part that a witness has testified to, or you may disbelieve everything a witness has testified to or you may believe everything he has testified to, in accordance with what you, the jury, decide about his credibility, that is, his worthiness of belief.

It is your duty, where the defendant has testified, to scrutinize his testimony carefully, because of his interest or bias in the outcome of this case, your verdict, and after you have carefully scrutinized his testimony in that light,

you still believe that he is telling the truth, that he is worthy of belief, then you will give to his testimony the same weight that you would the testimony of a disinterested [fol. 65] witness, and that of course applies to both defendants in this case, because both defendants have testified.

Now as to all witnesses, you must scrutinize their testimony in the light of any bias, if any, and their opportunity to see and observe the things that they have testified to. You may also consider the deportment and demeanor of the witness upon the stand in judging his worthiness of belief.

Now in this case the Court has defined the crime of common law robbery, the commission of which the defendants are charged in the bill of indictment, and there are two essential elements to the charge of common law robbery which must be proved by the State beyond a reasonable doubt and if it fails to so satisfy you of each and both elements, it would be your duty to acquit these defendants of the charge of common law robbery. The first is that these defendants did feloniously or dishonestly take money or property of W. G. Spell from the person of W. G. Spell, without his consent and against his will, and second that this was done by violence, intimidation and putting him in fear.

On the charge of larceny from the person, the state must satisfy you that the defendants did take from the person of W. G. Spell, without his consent, something of value, with fraudulent intent, that is, intent to permanently deprive W. G. Spell of his property and appropriate the same to their, the defendants', own use.

If the State has satisfied you from the evidence and beyond a reasonable doubt that the defendants, or either of them, did unlawfully, willfully and feloniously take money [fol. 66] from the prosecuting witness, Mr. Spell, without his consent, and against his will, by violence, intimidation and putting him in fear, then you would find that defendant guilty as charged of common law robbery.

If you find either of the defendants guilty of common law robbery and you further find beyond a reasonable doubt that the other defendant was present aiding and abetting, as the Court will define that term to you, the other in said robbery, it will be your duty to find that defendant equally guilty of common law robbery.

An aider and abettor is one who advises, counsels; procures or encourages another to commit the criminal act.

To aid and abet commission of crime, one must do something that will incite, encourage, or abet actual perpetrator in commission of crime.

Where two or more persons aid and abet each other in commission of a crime, all being present, all are principals and equally guilty.

If you fail to find the defendants or either of them guilty of common law robbery, then you will consider whether they are guilty of larceny from the person.

If you find that the defendants, or either of them, did unlawfully and wilfully take money from the person of W. G. Spell, without his consent and against his will and you find this beyond a reasonable doubt, then you will find those defendants or that defendant guilty of larceny from the person.

If you find one defendant guilty of larceny from the person and find further, beyond a reasonable doubt, that the other defendant was present, aiding and abetting, as the [fol. 67] Court has just defined that term to you, the other in the larceny from the person, then it will be your duty to find that defendant equally guilty of larceny from the person.

If you do not find the defendants, or either of them, guilty beyond a reasonable doubt of common law robbery, as the court has explained that to you and you do not find beyond a reasonable doubt the defendants, or either of them, guilty of larceny from the person, as the Court has explained that to you, then you will acquit the defendants, either or both of them, about which you do not so find, you will acquit them and return a verdict of not guilty.

The court is not going to reiterate to you all the testimony which came from the stand. I am sure you will recall it all, which is your duty.

The Court would like at this time to point out that if in recapitulating the evidence, giving any contention, or if in ruling on the evidence or by any act or mannerism, or words spoken by the Court, the Court has or should seem to indicate an opinion one way or the other as to the guilt or innocence of the defendants, please strike that from your mind. It is not the intent of the Court to indicate any opinion as to the guilt or innocence of these defendants.

That would be highly improper and against the law. The Court has not intended to do that in this case or in any case. As a matter of fact, the law is that the Court cannot even comment on the verdict of the jury after it is announced.

[fol. 68] The State has offered evidence which it contends tends to show that on the 14th of February, 1958, about the hour of seven o'clock, that W. G. Spell met some boys in a bar on Gillespie Street in close proximity to the Market House; that one Ray Starling offered to take him home for a dollar, to which he agreed. That as they were backing out to leave, the car being driven by a blond-headed boy unknown to him, the defendant Larry Hudson came running and got into the car with them; that there were four in the car altogether. That at that time he had consumed three beers; that after they got in the car, they went down to Liberty Point and that some of the occupants of the car wanted him to buy a pint of liquor but that he did not. That they left there and went South on 301 beyond the Patrol Station and took a left turn down a dirt road. That the car stopped; that Larry Hudson crawled from the front seat into the back and told him to get out and hold his hands straight up. They, all the occupants, got out of the car and that while the others stood around Larry Hudson removed his wallet and took therefrom a ten dollar bill, two fives and four one dollar bills and eighty-five cents in change; that he never got his wallet back. The defendants and the other occupants of the car got back in and left, leaving him in the woods, that the car circled around several times and got stuck in the sand. That of the occupants of the car he recognizes Ray Starling and Larry Hudson.

The witness testified on cross examination that he offered no resistance to the taking of his money and that he [fol. 69] was not put in fear but that he figured three men were better than one. The witness further testified that he had been convicted twice for public drunkenness. He further testified on cross examination that he had been paid \$46.75 for his week's work and had come to town and paid ten dollars on one account and some other bills and purchased three glasses of beer at fifteen cents a glass. He later stated that he drew only \$33.95 for his work that week; but that he put twenty-four dollars in the billfolder and buttoned the

pocket to take home. The witness further testified on cross examination that he had been convicted once for assault.

The State then offered the testimony of deputy sheriff Elmer Arnett, which it contends tends to show that Mr. Arnett talked with the witness Spell and Mr. Arnett related the conversation for the purpose of corroborating the witness Spell.

As the Court has already instructed you, this account of the conversation between the witnesses Mr. Arnett and Mr. Spell may be considered by you only insofar as it tends to corroborate the witness Spell, if you find it does so corroborate him; that part which does not corroborate the witness Spell, you will disregard.

The witness further testified that he talked with Larry Hudson and that Larry Hudson denied knowing anything about the charge; that he took the defendant Hudson into the presence of Ray Starling and that Ray Starling said in the presence of Larry Hudson that he, Ray Starling was the one got the pocketbook out of Mr. Spell's pocket but [fol. 70] that Larry Hudson was the one crawled over into the back seat and told Mr. Spell to get out.

The State then offered the testimony of Deputy Sheriff J. D. Snipes, which it contends tends to show that he investigated this charge and talked to Ray Starling and that Ray Starling admitted being with the other defendants and Mr. Spell on this occasion and that Ray Starling told Larry Hudson, "You might as well go ahead and admit it; they have us," but that Larry Hudson denied knowing anything about it.

At this time the State rested and the defendant Ray Starling testified in his own behalf that he, Larry, and Rubin Grimsley were riding around drinking on the date in question, February 14, and picked up Mr. Spell and were going to take him home; that they went by the liquor store and got a pint of vodka for which Mr. Spell paid. That they stopped, got chasers and drank that pint of vodka. That they went out on 301 South and turned off on a dirt road; that Mr. Spell got sick and started vomiting in the car and that they put him out and left him in the woods. That he and Larry were on the back seat and that he, Starling, found a billfold, opened it and there was nothing in it. That Larry suggested that they go back and give the billfold to

Mr. Spell and that they did go back and called to him but could not find him. That from there they left and went over to Cross Creek Court Recreation Center, arriving there about eight o'clock. That he was pretty drunk and the officer on duty there told David to take him home.

[fol. 71] On cross examination the defendant Starling stated that he had just recently gotten off the roads, having been convicted because of a worthless check; that he was convicted of being drunk in 1953; that he is now twenty-three years of age. That he was also convicted in Wilmington for larceny.

Then the defendant Larry Hudson, testified in his own behalf that on this night in question he was at the D & W Soda Shop drinking a Coca Cola and was joined by David Cain, Ray Starling and Rubin Grimsley. That he left with them to get something to drink; that they got a pint of vodka and drink it. That they went to the Aster Bar where they met Mr. Spell and that Ray Starling offered to take Mr. Spell home and they all got in the car and left; that Mr. Spell counted out two dollars and some odd cents to him and that he took this money and bought another pint of vodka. That later Mr. Spell got sick and started vomiting in the car and some one suggested that they put him out and that he suggested that they get him off the road first as he was in a drunken condition and might be run over on the highway. That after they left Mr. Spell in the woods that Ray Starling found his billfold in the back of the car. That they turned around and tried to find Mr. Spell in order to return the billfold but were unable to do so and there being nothing in the billfold that Ray Starling threw it out the window of the car.

On cross examination Larry Hudson testified that he is now eighteen years of age; that he has been convicted of [fol. 72] breaking and entering and went to East Carolina Training School of his own free will, from which he had escaped twice; that he had also been convicted of careless and reckless driving.

Upon this evidence the State contends that you should find each of these defendants guilty beyond a reasonable doubt, of common law robbery, that the witness Spell was invited into the automobile in order that they might take him out and rob him; that they carried Spell out into the

woods and there forced him out of the car and forced him to hold his hands above his head while one of them took from him his wallet, containing some amount of money, approximately twenty-four dollars, the others standing by aiding and abetting, and therefore, you should find that this money was taken from him without his consent and against his will, by violence, intimidation and putting him in fear and, therefore, that you should find each of them guilty beyond a reasonable doubt, of the charge of common law robbery.

The defendants and each of them on the other hand contend that you should not so find, that you should have a reasonable doubt and acquit them. They contend that they in no way harmed the witness Spell and that they did not take his money or billfold; that they put him out of the car because of his drunken condition and that after he left the car, his billfold, containing no money, was found in the car. That they were unable to return his billfold because they could not find him.

They, and each of them, therefore, contend that they are not guilty of any offense and that you should acquit them. [fol. 73] The State contends that if you should not find the defendants guilty beyond a reasonable doubt of common law robbery, that you should at least find them guilty of larceny from the person; that if you should find that they did not use any violence or intimidation and did not put the witness Spell in fear, that they at least took his money without his consent and against his will and that you should at least find each of the defendants guilty beyond a reasonable doubt of larceny from the person.

Each of the defendants on the other hand contend that they and neither of them took any money from the witness Spell and made no attempt to do so, and, therefore, that they are not guilty of anything and that you should so find and acquit them.

The Court instructs you that from this evidence you may find both defendants guilty of common law robbery, or you may acquit one and find the other guilty; that you may acquit both of common law robbery and find them guilty of larceny from the person or you may convict one of larceny from the person and acquit the other; or you may find both

of them not guilty, as you may find the facts to be from the evidence.

So the Court instructs you that if the State has satisfied you from the evidence and beyond a reasonable doubt that the defendants Ray Starling and Larry Hudson, or either of them, the other being present aiding and abetting, as that term has been explained to you, did unlawfully, wilfully and feloniously rob and take any amount of money [fol. 74] from the person of W. G. Spell, the property of W. G. Spell, without his consent, and against his will, by violence, intimidation and putting him in fear, then you would return a verdict of guilty of the offense of common law robbery.

If you do not so find, then you will consider whether or not they or either of them is guilty of larceny from the person.

If the State has satisfied you from the evidence and beyond a reasonable doubt that the defendants Ray Starling and Larry Hudson, or either of them, the other being present aiding and abetting, did unlawfully and wilfully take any amount of money from the person of W. G. Spell, the property of W. G. Spell, without his consent and against his will, with the intent at the time of the taking of permanently depriving W. G. Spell of his property and appropriating the same to their own use, then you will find the defendants guilty of larceny from the person.

Take the case, Members of the Jury, and say how you find the defendant Ray Starling, guilty of common law robbery, guilty of larceny from the person or not guilty; and how you find the defendant Larry Hudson, guilty of common law robbery, guilty of larceny from the person or not guilty.

Take the case.

[fol. 75] Clerk's Certificate Omitted in Printing.

[fol. 76] IN THE SUPERIOR COURT OF CUMBERLAND COUNTY,
MARCH CRIMINAL TERM 1958

#10276 Assault and Robbery

STATE OF NORTH CAROLINA

vs.

DAVID CAIN, LARRY HUDSON, RAY STARLING

MINUTES OF MARCH 13, 1958

The defendant, David Cain by and through his counsel, Hector McGeachy, enters a plea of guilty of petty larceny, which plea is accepted by the State.

The defendants, Larry Hudson and Ray Starling, not being represented by counsel, enters a plea of Not guilty.

Whereupon the following good and lawful citizens of Cumberland County were chosen, sworn and empanelled as the jury in this case, to-wit:

Mrs. Andy Tola, William H. Knight, Mrs. Rossie V. Derby, Eula Mae Thames, James B. Wood, W. W. Hales, Carson Jackson, J. R. Beal, Arthur R. Skipper, H. J. Carter, Marie S. Adecox, W. H. Harrison.

At the close of the State's evidence, each defendant makes a motion to dismiss the case. Motion denied; defendants except.

After hearing all the evidence and the charge of the Court, the jury says for its verdict:

as to the defendant, Ray Starling, Guilty of Larceny from a person;

as to the defendant, Larry Hudson, Guilty of Larceny from a person;

Judgment was not entered this date and will be entered later.

At this hour 5:00 o'clock P.M. Thursday, March 13, 1958, the Court takes a recess until tomorrow morning, Friday, March 14, 1958, at 9:30 o'clock, A.M.

s/ Heman R. Clark, Honorable Judge Presiding.

IN THE SUPERIOR COURT OF CUMBERLAND COUNTY

MINUTES (including Judgment) OF MARCH 14, 1958

At this hour, 9:30 o'clock A.M., Friday, March 14, 1958, the Court reconvenes for the transaction of business in accordance with recess had on yesterday.

#10276 Assault and Robbery

STATE OF NORTH CAROLINA,

vs.

DAVID CAIN, LARRY HUDSON, RAY STARLING

Trial of this case was completed yesterday and judgment is entered this date.

[fol. 77] Now, therefore, judgment of the Court is that the defendant, David Cain, be confined in the common jail of Cumberland County and assigned to work upon the public roads of the State under the supervision of the N.C. Prison Commission for a period of six (6) months. Execution of the foregoing sentence is suspended upon condition that the defendant be placed on probation for a period of five (5) years under the supervision of the N. C. Probation Commission and its officers with the usual conditions of probation. Defendant is to pay the cost of court as taxed by the Clerk.

Judgment of the Court as to the defendant, Larry Hudson, is that the defendant be confined for a period of not less than three (3) nor more than five (5) years in the North Carolina State Prison, at Raleigh, N. C.

Judgment of the Court as to the defendant, Ray Starling, is that the defendant be confined in the common jail of Cumberland County and assigned to work upon the public roads of the State under the supervision of the N. C. Prison Commission for a period of not less than eighteen (18) months nor more than two (2) years.

At this hour 5:30 o'clock P.M., Friday, March 14, 1958, the Court adjourns Sine Die.

s/ Heman R. Clark, Honorable Presiding Judge.

[fol. 78] IN THE SUPERIOR COURT OF CUMBERLAND COUNTY

NOTICE OF APPEAL—Dated March 16, 1958

North Carolina Prison Department

Mr. Thomas Williams
Cumberland County House
Fayetteville, N. C.

835 West Morgan St.
Raleigh, North Carolina
March 16, 1958

DEAR SIR:

This is in regards to a recent conviction rendered down in Court. I refer to the case of assault and robbery—in which I was the convicted party. This case was tried upon the 13th day of March 1958.

As a result of this conviction I received a sentence of not less than 3 years nor more than five years. I would like to give notice for appeal to the State Supreme Court of North Carolina. And also ask that you consider this as such.

I did asked the court to appoint me a Counsel and the court refused to do so.

I was not represented by Counsel at any time during the proceeding mentioned above. I believe this to be a direct violation of my constitutional rights.

I ask sir that you take this under consideration. And doing so have me returned to Cumberland County, so that I can retain an attorney to defend me on this appeal. Also give me the due right to be placed under a date bond.

Respectfully yours, Larry Dayton Hudson.

State of NORTH CAROLINA, County of Wake on this 17th day of March 1958, personally appeared before me, the said named Larry Dayton Hudson to me known and known to me to be person described in and who executed the foregoing instrument and he (or she) acknowledged that he (or she) executed the same, and being duly sworn by me, made oath that the statements are true.

Signature of Notary Public, L. R. Temple.

[Official Seal]

[fol. 79] IN THE SUPERIOR COURT OF CUMBERLAND COUNTY

STATE,

VS.

LARRY DAYTON HUDSON

ORDER RE-NOTICE OF APPEAL—APRIL 25, 1958

The defendant, at the March Term 1958 of Cumberland Superior Court, was convicted on a charge of Assault and Robbery, as will appear of record. He was sentenced by Judge Heman R. Clark to serve a term of not less than three (3) years nor more than five (5) years in the State Prison. The Court finds that within ten (10) days after the judgment was entered he filed notice of appeal to the Supreme Court in the Clerk's Office of Cumberland County; and that the Solicitor for the State has waived any irregularity arising by reason of his failing to serve any notice of his intention to appeal to the Supreme Court upon him.

It is, Therefore, Ordered by the Court that the defendant be permitted to perfect his appeal to the Supreme Court and it is further ordered that he have thirty (30) days from the date of this order to serve a statement of case on appeal upon the Solicitor for the State, and that the Solicitor shall have twenty (20) days thereafter to serve counter case, or exceptions, upon the defendant. It is further ordered that the defendant file an appeal bond in the sum of One Hundred (\$100.00) Dollars, unless he does comply with the Statute permitting him to appeal without giving an appeal bond. It is further ordered that the defendant be permitted, upon his return to the jail in Cumberland County, to give an appearance bond as required in criminal cases where there is an appeal to the Supreme Court and the Court adjudges that an appearance bond of Twenty-Five Hundred Dollars is sufficient.

It Is Further Ordered that the Director of Prisons and the Warden of the State Prison be directed to deliver the [fol. 80] defendant, a prisoner now in the State Prison, to the Sheriff of Cumberland County, or his lawful Deputy, to the end that said Sheriff, or lawful Deputy, may bring said prisoner back to the common jail of Cumberland

County and, after he is so returned, it is ordered by the Court that he remain in jail pending his appeal to the Supreme Court, unless he gives an appearance bond in the sum of Twenty-Five Hundred Dollars, to be approved by the Clerk of the Superior Court of Cumberland County.

This the 25th day of April, 1958.

/s/ Leo Carr, Judge Presiding.

[fol. 81] IN THE SUPERIOR COURT, CUMBERLAND COUNTY,
NORTH CAROLINA, JUNE TERM 1958

No. 10275

STATE

vs.

LARRY DAYTON HUDSON

ORDER DISMISSING APPEAL TO SUPREME COURT OF NORTH
CAROLINA—June 26, 1958

In this action the Solicitor for the State of this the 26th day of June 1958 moves that the court adjudge that the defendant's appeal to the Supreme Court has been abandoned for that the defendant has not served the statement of case on appeal as required by the order of the Court and the Court finds as a fact that the record shows that the defendant had until the 24th day of June 1958 within which to prepare and serve statement of case on appeal on the Solicitor and that he has failed to serve said statement of case on Solicitor as prescribed by order of Court and by the appeal entries entered in this Court:

Therefore, upon motion of Solicitor it is ordered and adjudged that the defendant's appeal to the Supreme Court has been abandoned and it is further ordered that commitment issue forthwith and that the defendant be required to serve the sentence imposed by the Court in this action at the March Term 1958.

Leo Carr, Judge Presiding.

[fol. 82] IN THE SUPERIOR COURT OF CUMBERLAND COUNTY

North Carolina Prison Department
Fayetteville, N. C.

STATE OF NORTH CAROLINA, Respondent,

vs.

LARRY DAYTON HUDSON, Petitioner

PETITION FOR WRIT OF CERTIORARI

Now comes one Larry Dayton Hudson, known now and hereinafter to be called your petitioner.

Your petitioner requests that he be brought into your honorable court, to have a hearing on a writ of Certiorari. For the following reasons to wit:

Your petitioner was tried in the March 14, 1958, Criminal Term of Court, in Cumberland County, Fayetteville, North Carolina, for assault and robbery. And the Jury brought back in a verdict of guilty of larceny from a person. And the judgment of the court as to your petitioner was that he be confined for a period of not less than three nor more than five years in the North Carolina State Prison, at Raleigh, N. C. Your petitioner was took to the State Prison at Raleigh, N. C., March 14, 1958, to start his time. On March 16, 1958, your petitioner sented to the Clerk of Superior Court of Cumberland County, Notice of Appeal to the N. C. Supreme Court. And on April 26, 1958, he was took back to Cumberland County Jail to await the hearing of his trial in the Supreme Court of North Carolina. Your petitioner took a pauper's oath to perfect his appeal through [fol. 83] to the Supreme Court. On June 26, 1958, your petitioner was took to the Superior Court of Cumberland County to have a hearing on a Writ of Habeas Corpus, and his Honorable Judge Lee Carr told your petitioner that a Writ of Habeas Corpus could not be used while a person had an appeal in to the Supreme Court, and that he could not rule on it. And so he dismissed my Writ. And right after he dismissed my Writ, he dismissed my Appeal to the Supreme Court. And so my appeal never got to the Supreme Court. And your petitioner was brought back to

the State Prison at Raleigh, N. C., and his 3-5 years sentence was started all over again.

YOUR PETITIONER ASSERTS

I. That he is imprisoned in the state penitentiary in Raleigh, North Carolina, and I am being held in prison illegally, on the grounds that I was tried in criminal court for a felony without counsel, which I humbly begged the court for. In the transcript of my case in Court Page One is actual proof of this statement. In the Constitutional Amendments Article (VI) six specifically states that: In all criminal prosecutions the accused shall have the assistance of counsel for his defense.

II. Attorney McGeachy, did offer to defend your petitioner, free of charge. And the court refused to let him defend me.

III. Your petitioner further asserts that: The prosecuting [fol. 84] ing witness did and make false statement to the court. Thereby intimidating both judge and jury.

IV. Your petitioner asserts that: The prosecuting witness, W. G. Spell, has been to a mental institution (Dix Hill, Raleigh, N. C.), and was kept as a mental patient for a period of eighteen (18) months. Your petitioner further contends that the prosecuting witness W. G. Spell's testimony is highly incompetent. And for his reason his testimony should not be accepted as evidence against your petitioner.

V. Your petitioner asserts that: The court did accept statements made by Deputy Sheriff Arnett and Deputy Sheriff J. D. Snipes that was made to them by the other two defendants while your petitioner was not there. Which is highly illegally.

VI. Your petitioner further asserts that: He was tried on two different cases that happen on the same night, at the same time, ten miles apart. And was convicted on both of them. Which is illegally because a man cannot be in two different places at the same time.

Your petitioner has in his possession the transcript of his case in court and the actual proof of the statements given above.

[fol. 85] Your petitioner is a poor man and penniless and ask that he be permitted to prosecute this proceeding free of charge, as a pauper.

For the reasons given above your petitioner contends that his Constitutional Rights of the United States and of the State of North Carolina has been violated. And he contends that for these reasons he should be released from prison, and that he be granted a new trial.

I set my hand and sign this 8th day of August Nineteen-hundred and fifty-eight in the year of our Lord.

Respectfully yours, Larry Dayton Hudson.

Amendment. Petitioner, with leave of court requests that counsel be appointed for him to conduct his hearing on this petition to determine the constitutionality of his imprisonment.

Duly sworn to by Larry Dayton Hudson—Jurat omitted in printing.

[fol. 86] IN THE SUPERIOR COURT OF CUMBERLAND COUNTY

STATE

vs.

LARRY DAYTON HUDSON

ORDER DISMISSING PETITION FOR CERTIORARI—Sept. 29, 1958

This cause coming on to be heard and being heard upon the petition of Larry Dayton Hudson, dated August 8, 1958, entitled "Petition For Writ of Certiorari", and filed in the Superior Court of Cumberland County, said petition being treated and heard as a proceeding under the North Carolina Post-Conviction Act, G. S. 15-217, et seq. the petitioner being present in Court and represented by his Court appointed counsel, N. H. Person, a member of the Cumberland County Bar. The petitioner alleged in his petition that at his trial at the March 1958 Term of the Superior Court of Cumberland County the Court refused to appoint counsel to defend him, admitted incompetent evidence against him, and that his constitutional rights were violated. No written answer was filed by the State but the Solicitor for the State orally stated to the Court that the

allegations of the petition were denied, and moved to dismiss said petition. The Court after hearing the evidence presented, reading a transcript of the evidence taken at the petitioner's trial, examining the Court papers in the case, and after hearing argument of counsel, finds the following facts:

1. That the petitioner and two codefendants, Ray Starling and David Cain, were tried at the March 1958 Term of the Superior Court of Cumberland County upon a bill of indictment charging them with robbery, the said David Cain being represented by N. H. McGeachy, Jr., attorney, and the petitioner and the said Ray Starling not being represented by counsel.

2. That when the case was called for trial the petitioner stated to the presiding Judge, Honorable Heman R. Clark, that the petitioner did not have funds to employ an attorney, that petitioner was not capable of defending himself, and asked the Court to appoint counsel for him. That the Court thereupon told the petitioner that the Court would try to see that the petitioner's rights were protected throughout the case, and the Court did not appoint counsel for the petitioner.

3. That Mr. N. H. McGeachy, Jr., attorney for David Cain, told the Court that he would help all three defendants so long as there was no conflict of interest but the Court thought there might be some conflict of interest, and Mr. McGeachy represented only the defendant David Cain at said trial.

4. That the petitioner never requested Mr. McGeachy to represent him either before or during the trial, and, except as above stated, Mr. McGeachy never offered to represent the petitioner at said trial.

5. That the Court advised the petitioner of his right to challenge when the jury was selected and advised the petitioner of his right to cross examine witnesses and to argue the case to the jury.

6. That during the trial the Court properly excluded evidence which was inadmissible, and the petitioner cross examined the witnesses against him and at his request testified in his own behalf.

7. At the close of the State's evidence and after motion for nonsuit was overruled the defendant, David Cain,

through his counsel, Mr. McGeachy, tendered a plea of guilty of larceny, which was accepted by the State, and the trial proceeded as to the petitioner and the defendant Ray Starling, who were found guilty by the jury of larceny from the person.

8. The petitioner was sentenced to imprisonment for a term of not less than three (3) years and not more than five (5) years in the State's Prison and within ten days gave notice of appeal.

9. At the April 1958 Term of the Superior Court of Cumberland County Honorable Leo Carr, Judge presiding, entered an order allowing the petitioner sixty days from the 25th day of April 1958 to serve statement of case on appeal and the petitioner was permitted to appeal without giving security for costs, as provided by G. S. 15-181.

[fol. 88] 10. That on the 26th day of June 1958, Honorable Leo Carr issued a Writ of Habeas Corpus at the petitioner's request, and at a hearing upon the return thereof on the same day Judge Carr entered an order denying the relief sought by the petitioner. On the same date Judge Carr, upon motion of the Solicitor for the State, entered an order adjudging that the petitioner's appeal to the Supreme Court had been abandoned and ordered that commitment be issued upon the sentence adjudged by Judge Clark at the March 1958 Term of Court.

11. That although the petitioner was only eighteen years of age and had been only to the sixth grade in school at the time of his trial, he is intelligent, well informed, and was familiar with and experienced in Court procedure and criminal trials, having been previously tried on different occasions for careless and reckless driving, for breaking and entering, for driving while under the influence of intoxicating liquor, and for assault and robbery, the last two cases being tried at the February 1958 Term of the Superior Court and the petitioner not being represented by counsel in these two cases. The petitioner, conducting his own defense, was acquitted of said assault and robbery charge tried at said February 1958 Term.

12. That the petitioner was convicted by a jury after a fair and impartial trial, presided over by an able and learned judge, and the evidence presented at this hearing fails to show any special circumstances which required the appointment of counsel for the petitioner.

Upon the foregoing facts it is the opinion of the Court and the Court concludes that Judge Clark's failure to appoint counsel for the petitioner did not deprive him of due process of law or deny him any substantial constitutional right; that the petitioner has had a fair and impartial trial, and that he is not entitled to the relief sought by his petition.

Now, Therefore, upon motion of the Solicitor for the State, and upon the foregoing findings of facts and conclusions of law, it is Ordered, Adjudged, and Decreed that the petitioner's petition be and the same is hereby dismissed.

[fol. 89] Entered this 29th day of September 1958, in open Court at Fayetteville, North Carolina.

/s/ C. W. HALL, Judge Presiding.

[fol. 90] IN THE SUPREME COURT OF NORTH CAROLINA

Fall Term 1958

STATE

VS.

LARRY DAYTON HUDSON

ORDER DENYING PETITION FOR WRIT OF CERTIORARI—
January 15, 1959

This matter came on to be considered by the Chief Justice and Associate Justices of the Supreme Court of North Carolina on the fourteenth of January, 1959, upon a petition for writ of certiorari to whom it appeared that the said petition should be denied;

Now, therefore, it is ordered accordingly that the petition be and the same is hereby denied, and that it be so certified to the Clerk of the Superior Court of Cumberland County, North Carolina.

Witness my hand and official seal this the fifteenth day of January, 1959.

Adrian J. Newton, Clerk of Supreme Court of North Carolina.

[fol. 91] Clerk's Certificate Omitted in Printing.

[fol. 92] SUPREME COURT OF THE UNITED STATES—OCTOBER
TERM, 1959

No. 22 Misc.

LARRY DAYTON HUDSON, PETITIONER

VS.

NORTH CAROLINA

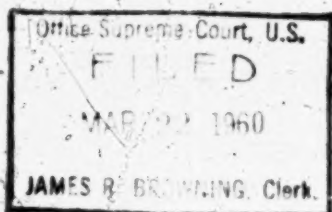
ORDER GRANTING LEAVE TO PROCEED IN FORMA PAUPERIS AND
PETITION FOR WRIT OF CERTIORARI—OCTOBER 12, 1959

On petition for writ of Certiorari to the Supreme Court
of the State of North Carolina.

On consideration of the motion for leave to proceed
herein in forma pauperis and of the petition for writ of cer-
tiorari, it is ordered by this Court that the motion to pro-
ceed in forma pauperis be, and the same is hereby, granted;
and that petition for writ of certiorari be, and the same is
hereby, granted. The case is transferred to the appellate
docket as No. 466.

October 12, 1959.

FILE COPY



IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 466

LARRY DAYTON HUDSON,

Petitioner,

vs.

NORTH CAROLINA.

**ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF NORTH CAROLINA**

BRIEF FOR PETITIONER

WILLIAM JOSLIN,
*600 Capital Club Building,
Raleigh, North Carolina,
Counsel for Petitioner.*